

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Higher Ed. Committee Analyst: Jeani Brent Bill Number: AB 2812
Related Bills: AB 530
(Stats. 1997, Ch. 851) Telephone: 845-3410 Amended Date: 08/17/98
Attorney: Doug Bramhall Sponsor: _____

SUBJECT: 1998 Higher Education Omnibus Act

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of bill as amended June 10, 1998.
_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
☒ FURTHER AMENDMENTS NECESSARY.
_____ DEPARTMENT POSITION CHANGED TO _____.
_____ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.
☒ OTHER - See comments below.

SUMMARY OF BILL

Under the Education Code and Revenue and Taxation Code, this bill would make numerous changes to the Golden State Scholarshare Trust Act.

This bill also would make changes to other provisions in the Education Code and the Government Code. These changes do not affect the department and are not discussed in this analysis.

SUMMARY OF AMENDMENT

The August 17, 1998, amendments removed the Penal Code provisions.

The July 27, 1998, amendments made changes to the provisions in the Education Code other than Scholarshare.

The July 20, 1998, amendments added the Revenue and Taxation Code provisions.

The July 8, 1998, amendments adopted amendments proposed by the department to modify definitions in the Education Code to refer to the federal definition.

The June 10, 1998, May 26, 1998, and April 30, 1998, amendments made changes to the provisions in the Education Code (other than Scholarshare), Government Code and the Penal Code.

EFFECTIVE DATE

This bill provides for an appropriation and, therefore, would be effective upon enactment.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Gerald H. Goldberg

8/27/98

SPECIFIC FINDINGS

Under the Education Code, **existing state law** provides the Golden State Scholarshare Trust Act (Scholarshare). Under Scholarshare, the California Student Aid Commission may enter into agreements with participants for the advance payment of qualified higher education expenses for a beneficiary to attend an institution of higher education. Under Scholarshare, the trust is required to provide an annual listing to the department of all Scholarshare distributions.

Under the Personal Income Tax Law and the Bank and Corporation Tax Law, **existing state law** provides an exclusion from gross income for any interest accruing on a Scholarshare account during the taxable year.

This bill, under the Education Code, would make the following technical changes to Scholarshare:

1. Eliminate the maximum annual contribution limitation provision. The bill would maintain the existing overall maximum investment level for each beneficiary.
2. Provide that, in addition to interest, no contributions may be pledged as collateral for any loan.
3. Include a provision regarding a more than de minimus penalty in the event of cancellation. An existing code section provides a more than de minimus penalty in the case of cancellation.
4. Provide that the balance of a participant's account shall be paid to the participant if the beneficiary graduates and has no intention of further attendance.
5. Changes the date by which the Student Aid Commission must submit an annual report of the trust.
6. Replaces the incorrect phrase "administration refund levied" with the correct phrase "penalties imposed" in the requirement to provide a listing to the Franchise Tax Board.
7. Replaces the incorrect term "payments" with the correct term "contributions."
8. For definitions that are contained both within state and federal law, the bill would replace the state definition with a reference to the federal definition. Because the Revenue and Taxation Code Scholarshare income exclusion provisions reference those definitions in the Education Code, the change would ensure equivalent tax treatment under both federal and state law.

Under the Bank and Corporation Tax Law, **this bill** would include state or local government agencies in the types of entities from which a contribution to a Scholarshare account must be included in the owner's or employee's gross income in the year the contribution is made. **This bill** also would technically correct a code section reference.

Implementation Consideration

Implementing this bill would not significantly impact the department's programs and operations.

Technical Consideration

Because the Scholarshare tax exclusion is contained in both the Personal Income Tax Law and the Bank and Corporation Tax Law, the changes made by this bill should be made in both laws. Amendment 1 would include these changes in the Personal Income Tax Law. This amendment also provides instructions to the Legislative Counsel's office to double-join this bill to AB 1613, which also proposes to amend the Scholarshare Revenue and Taxation Code provisions.

FISCAL IMPACT

This bill would not impact the state's income tax revenue or the department's current programs or practices.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2812
As Amended August 17, 1998

AMENDMENT 1

On page 33, line 4, after "SEC. 31." insert:

Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act ~~(Art. 19 (commencing with Section 69980), Ch. 2, Pt. 42, Ed. C.)~~ (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity

or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 2032A(e) (2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(d) For purposes of determining adjusted gross income, Section 62 (a)(9) of the Internal Revenue Code shall not apply to any amount forfeited upon distribution of an account created pursuant to a participation agreement.

SEC. 32.

@@@@@Leg. Counsel: Please renumber remaining bill sections. ALSO, PLEASE DOUBLE-JOIN THIS BILL TO AB 1613.